IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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R.S.A. No.2388 of 2004
Date of Decision:19.10.2007

Dheru Ram

.....Appellant

Vs.

Hukami Devi and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Arun Bansal, Advocate for the appellant.

Mr. H.K.Aurora, Advocate for respondents No.3 and 4.

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Rajesh Bindal, J.

The defendant is in appeal before this Court against the judgment and decree of the learned lower appellate court whereby that of the trial court has been reversed.

The respondents/ plaintiffs filed a suit for permanent injunction restraining the appellant/ defendant from interfering in their possession of the suit land and also from dispossessing them forcibly. The claim of the respondents/ plaintiffs was that they are in possession of the land for the last more than 20 years as the same was taken by them from its original owner Gangi for the purpose of cultivation on batai. The revenue record clearly shows them to be in possession of the suit land as gair marusi and in column 9 thereof, the nature of possession is shown as on payment of half share of the produce. All the khasra girdawari entries were also shown in favour of the respondents/ plaintiffs. The appellant/ defendant has no connection with the suit land as there is no material on record to show as to in what capacity he is claiming himself to be in possession of the suit land. What has come on record in the form of his admission in cross-examination is that he owns land measuring 13 kanals which is adjoining the suit land. The plea set up by the appellant/ defendant is to the effect that the respondents were not paying any batai for use of the land and also that in fact in the revenue record part of the land was shown to be Banjar Qadim and vacant which clearly shows that the respondents were not in possession of the suit

land. However, still even under these circumstances, it will not be the appellant who could be said to be in possession of the land, he is not the owner of the land. If the land is lying vacant, the presumption would be that it is in possession of the owner thereof. Even otherwise, the appellant tried to raise contradictory pleas while in the written statement, the stand was that he was in occupation of the land since 1963 whereas the witnesses produced by him deposed that he was in possession of the land for about 10-12 years. Once there was documentary evidence available in form of revenue record, the oral statements made by the witnesses produced by the appellant could not be accepted.

Accordingly, I do not find any substantial question of law arises in the present appeal and the same is dismissed.

October 19, 2007 **(RAJESH BINDAL)**
renu **JUDGE**